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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/701,760	04/19/2001	Harold N. Conkle	PC10433A	8928

7590

09/09/2003

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EXAMINER

SWARTZ, RODNEY P

ART UNIT PAPER NUMBER

1645

DATE MAILED: 09/09/2003

16

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/701,760

Applicant(s)

CONKLE ET AL.

Examiner

Rodney P. Swartz, Ph.D.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

**DETAILED ACTION**

1. Applicants' Response to Office Action, received 18 June 2003, paper #15, is acknowledged.

Claims 1, 2, 3, 4, 7, 9, 10, 11, 15, 16, 18, 19, 20, 22, and 26 have been amended. New claims 28-51 have been added.

2. Claims 1-51 are pending and under consideration.

**Rejections Withdrawn**

3. The rejection of claims 2-6 under 35 U.S.C. 112, second paragraph, insufficient antecedent basis for the limitation "the sodium sulphate" is withdrawn in light of the claim amendments.
4. The rejection of claim 3 under 35 U.S.C. 112, second paragraph, indefiniteness, is withdrawn in light of the claim amendment.
5. The rejection of claims 18-27 under 35 U.S.C. 112, second paragraph, indefiniteness, is withdrawn in light of the claim amendment.
6. The rejection of claims 1-27 under 35 U.S.C. 112, second paragraph, indefiniteness, is withdrawn in light of applicants' arguments.
7. The rejection of claim 1 under 35 U.S.C. 102(b) as being anticipated by O'Grady et al (*Can. J. Comp. Med.*, 44:148-154, April 1980), is withdrawn in light of the amendment of the claim.
8. The rejection of claim 1 under 35 U.S.C. 102(b) as being anticipated by Davis et al (U.S. Pat. No. 4,544,548, 10/1985), is withdrawn in light of the claim amendments and applicants' arguments.

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9. The rejection of claim 1 under 35 U.S.C. 102(b) as being anticipated by Fuller et al (*J. Protozool.*, 36(2):143-146, 1989), is withdrawn in light of the claim amendments and applicants' arguments.
10. The objection to claims 2-14 and 18-27 as being dependent from a rejected claim 1, is withdrawn

### **Rejections Maintained**

11. The rejection of claims 15-17 under 35 U.S.C. 112, second paragraph, indefiniteness, is maintained for reasons of record.

Applicants argue that the term is intended to indicate that the level of microorganisms other than the oocysts is reduced or eliminated.

The examiner has considered applicants argument, but does not find it persuasive because neither the specification nor the claims define the term. It is recommended that if the applicants amend the claims to reflect what they "intend".

### **New Objections/Rejections Necessitated by Amendment**

12. The amendment filed 18June2003, paper#15 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: deletion of "sodium chloride" from paragraph at page 5, lines 14-25. While the applicants state that sodium chloride has undesirable corrosive effects, the benefit of the salts listed is that they are "less corrosive" to the process equipment. However, the specification does not indicate what is the basis, i.e., "gold standard" to which the level of corrosion is compared. Therefore, the deletion of "sodium chloride" constitutes new mater.

Applicant is required to cancel the new matter in the reply to this Office Action.

**Claim Rejections - 35 USC § 112**

13. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

14. Claims 1-6, 28-39 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 30 recite a method comprising separating encysted protozoa by a salt flotation process wherein the salt comprises "a salt selected from the group consisting of". The use of the open terminology "comprises" connotes the possibility of other constituents, while "a salt selected from the group consisting of" connotes restriction to only one salt. This appears to be inconsistency in what the salt "comprises". Clarification of the terminology is required.

15. Claims 7-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 7 depends from newly added claim 40 which is drawn to a gas flotation process which recites using multiple flotation cells and recovering the encysted protozoa from "the" flotation cell. It is unclear which flotation cell is "the" cell when there are multiple cells involved. The dependent claims 8-14 do not clarify the indefiniteness.

16. Claims 18-27 and 41-51 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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The claims as newly amended or added depend now from rejected claim 15, but do not correct the reason for rejection of claim 15. Therefore the newly amended or added claims are rejected for the same reason as rejected 15.

17. Newly added claim 40 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are: there are no steps of the gas flotation process delineated.

### **Conclusion**

18. No claims are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

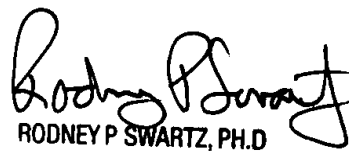
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney P. Swartz, Ph.D., whose telephone number is (703) 308-4244. The examiner can normally be reached on Monday through Thursday from 5:30 AM to 4:00 PM EST.

If attempts to reach the Examiner by telephone are unsuccessful, the examiner's supervisor, Lynette F. Smith, can be reached on (703)308-3909. The facsimile telephone number for the Art Unit Group is (703) 872-9306

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is (703)308-2035.

  
RODNEY P SWARTZ, PH.D  
PRIMARY EXAMINER

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September 8, 2003